

1 William M. Demlong (SBA#012458)  
2 Donald R. Kunz (SBA# 000795)  
3 **KUNZ PLITT**  
4 **HYLAND & DEMLONG**  
5 3838 North Central Avenue, Suite 1500  
6 Phoenix, Arizona 85012  
7 (602) 331-4600  
8 [wmd@kunzlegal.com](mailto:wmd@kunzlegal.com); [drk@kunzlegal.com](mailto:drk@kunzlegal.com)

9 Attorneys for Plaintiff

10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12  
13 **FOR THE DISTRICT OF ARIZONA**  
14

15 Markel International Insurance Company,  
16 a citizen or subject of a foreign country, as  
17 real party in interest and as successor to  
18 Terra Nova Insurance Company, formerly  
19 a citizen or subject of a foreign country,

20 Plaintiff,

21 v.

22 Venu at Grayhawk Condominium  
23 Association, Inc., a non-profit corporation  
24 organized and existing under and pursuant  
25 to the laws of the State of Arizona; The  
Edge at Grayhawk Condominium  
Association, a corporation organized and  
existing under and pursuant to the laws of  
the State of Arizona; Magellan  
Construction, L.P. an Arizona limited  
partnership,

Defendants.

No.

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

As and for its claim for declaratory judgment and related relief under and pursuant to those a certain provisions of the United States Code pertaining to actions for declaratory judgment, Plaintiff above-named claims and alleges as follows:

1           1.     Plaintiff, Markel International Insurance Company (“Markel”), is a business  
2 entity organized and existing under and pursuant to the laws of the United Kingdom, and  
3 accordingly Markel is a citizen or subject of a foreign state within the meaning of 28  
4 U.S.C. § 1332 (a)(2).

5           2.     Terra Nova Insurance Company (“Terra Nova”), was a business entity  
6 organized and existing under and pursuant to the laws of the United Kingdom, and  
7 accordingly Terra Nova was a citizen or subject of a foreign state within the meaning of 28  
8 U.S.C. § 1332 (a)(2).

9           3.     Terra Nova was heretofore acquired by Plaintiff, Markel, and Markel is thus  
10 the successor to and of Terra Nova; accordingly, Markel is the real party in interest in this  
11 proceeding, having succeeded to the rights and liabilities of Terra Nova with respect to the  
12 policy of insurance hereinafter alleged.

13           4.     Defendant, Venu at Grayhawk Condominium Association, Inc., is a  
14 corporation, not for profit, organized and existing under and pursuant to the laws of the  
15 State of Arizona with its principal place of business in the State of Arizona and, a citizen of  
16 the State of Arizona.

17           5.     Defendant, The Edge at Grayhawk Condominium Association, is a  
18 corporation, not for profit, organized and existing under and pursuant to the laws of the  
19 State of Arizona with its principal place of business in the State of Arizona and, a citizen of  
20 the State of Arizona.

21           6.     Magellan Construction, LP is an Arizona limited partnership whose owners  
22 are all citizens of the State of Arizona.

23           7.     Jurisdiction of this action in this Court is proper under the provisions of 28  
24 U.S.C. §1332 (a)(2) because the matter in controversy exceeds the sum of \$75,000,

1 exclusive of interest and costs, and is between citizens of a State and citizens or subjects of  
2 a foreign state.

3 8. Venue of this action in this Court is proper under the provisions of 28 U.S.C.  
4 §1391 in that the District of Arizona is a judicial district in which a substantial part of the  
5 events or omissions giving rise to the claim occurred.

6 9. Terra Nova heretofore issued and delivered to Valley Wide Plastering, Inc.,  
7 an Arizona corporation, as named insured, a policy of general liability insurance, Policy  
8 No. FB 00BJ40-00923, ("Policy") a copy of which is annexed hereto, marked as Exhibit A.

9 10. The Policy was effective July 23, 2000 to July 23, 2002.

10 11. In 2009, Defendant, Venu at Grayhawk Condominium Association, Inc.,  
11 prosecuted an action in the Superior Court of the State of Arizona in and for the County of  
12 Maricopa, No. CV2009-004664 (consolidated with CV2009-007737), hereinafter the  
13 "Venu Action".

14 12. In 2009, Defendant, The Edge at Grayhawk Condominium Association,  
15 prosecuted an action in the Superior Court of the State of Arizona in and for the County of  
16 Maricopa, No. CV2009-010114 (consolidated with CV2009-016934), hereinafter the  
17 "Edge Action".

18 13. In connection with both the "Venu action" and the "Edge action", counsel for  
19 Defendant Magellan Construction, LP, an Arizona limited partnership ("Magellan"),  
20 Townhome Village at Grayhawk, LLC, an Arizona limited liability company  
21 ("Townhome"), and Garden Village Associates at Grayhawk, LLC, a Delaware limited  
22 liability company ("Garden Village"), made various written demands to Terra Nova  
23 seeking defense and/or coverage for Magellan, Townhome, and Garden Village, under the  
24 Terra Nova Policy. A copy of these demands is attached hereto as Exhibit B.

1           14. In response to the written demands alleged in the preceding paragraph of this  
2 Complaint for Declaratory Judgment, Terra Nova, through itself or through its counsel,  
3 made written responses to the aforesaid demands. Copies of the written responses are  
4 attached at Exhibit C.

5           15. Subsequently, and notwithstanding Terra Nova's stated written position that  
6 it was neither obligated to defend Magellan, Townhome, or Garden Village in either such  
7 action, nor did the Terra Nova policy provide coverage to any of them for any matter  
8 alleged in either such action, Terra Nova in the Venu action, in order to buy its peace,  
9 offered to contribute the sum of \$50,000, which such offer was declined.

10           16. Thereafter, in the "Venu Action", Defendant Venu entered into a certain  
11 document styled "Settlement Agreement and Assignment of Claims", which was then  
12 followed by a certain "Stipulation and Joint Motion for Entry of Judgment for Plaintiff",  
13 which was then followed by a certain "Judgment for Plaintiff", true copies of each of  
14 which are annexed hereto, marked as Exhibit D.

15           17. The "Judgment for Plaintiff" referenced in the previous paragraph of this  
16 Complaint for Declaratory Judgment names Defendant, Venu at Grayhawk Condominium  
17 Association, Inc., as judgment creditor, and recites that the sum of \$1,178,600 was "For  
18 claims related to and/or damage caused by work of Valley Wide Plastering".

19           18. Thereafter, in the "Edge action", Defendant Edge entered into a certain  
20 document styled "Settlement Agreement and Assignment of Claims", which was then  
21 followed by a certain "Stipulation and Joint Motion for Entry of Judgment for Plaintiff",  
22 which was then followed by a certain "Judgment for Plaintiff", true copies of each of  
23 which are annexed hereto, marked as Exhibit E.

1           19. The “Judgment for Plaintiff” referenced in the previous paragraph of this  
2 Complaint for Declaratory Judgment names Defendant, The Edge at Grayhawk  
3 Condominium Association, as judgment creditor, and recites that the sum of \$1,178,600  
4 was “For claims related to and/or damage caused by work of Valley Wide Plastering”.

5           20. Both documents hereinabove styled “Settlement Agreement and Assignment  
6 of Claims” recite, in part, that Defendants Venu and Edge, and each of them, allege that  
7 liability to them is insured, in part, by the aforesaid Terra Nova Policy and that “a defense  
8 was owed” to Venu and Edge as “additional insureds” by Terra Nova thereunder, and that  
9 Terra Nova “improperly reserved rights, failed to defend or declined coverage”. The  
10 foregoing allegations are found in the document styled “Settlement Agreement and  
11 Assignment of Claims” at page 6, paragraph “I”.

12           21. Plaintiff Markel alleges that under the facts and pursuant to the governing  
13 law, Terra Nova, and thus Markel as successor to Terra Nova, had no duty to defend  
14 Magellan, Townhome, or Garden Village in either of the aforesaid actions in the Superior  
15 Court of the State of Arizona in and for the County of Maricopa, nor does or did the Terra  
16 Nova Policy provide coverage to Magellan, Townhome, or Garden Village, or any of them,  
17 as a consequence of any matter or thing then or thereafter alleged in either of the aforesaid  
18 actions in the Superior Court of the State of Arizona in and for the County of Maricopa,  
19 and that a justiciable controversy presently exists between Markel, as real party in interest,  
20 and Defendants, and each of them, as to the ongoing issues of defense and coverage in  
21 view of the fact that pursuant to the terms of the aforesaid documents styled “Settlement  
22 Agreement and Assignment of Claims” Venu and Edge purport to be the assignees of  
23 certain claims, as set forth in the annexed settlement agreements, at page 10, paragraph 7,  
24 styled “Assignment of Claims”, and that the claims allegedly reposing in Venu and Edge as

1 assignee include claims against Terra Nova respecting the issues of defense and coverage.  
2 The controversy aforesaid is present and subsisting, and the rights and liabilities of the  
3 parties hereto are and will remain uncertain until such time as the full extent of such rights  
4 and liabilities has been adjudicated and declared by this Court.

5 22. Based upon the above facts a justiciable controversy has arisen concerning  
6 the rights of the parties under the Policy. Pursuant to A.R.S. § 12-1831, *et seq.* and 28  
7 U.S.C. § 2201, *et seq.*, Plaintiff is entitled to a judicial determination of the rights of the  
8 parties under the terms of the Policy and the Court, pursuant to those statutes, has  
9 jurisdiction to make such determinations.

10 23. This action arises out of a contract, as a “contract” is contemplated by the  
11 provisions of A.R.S. §12-341.01, as a consequence of which, under that statute, Plaintiff  
12 may be entitled to an award of reasonable attorneys fees on the conclusion of this action.

13 Wherefore, Plaintiff, Markel International Insurance Company, as real party in  
14 interest and successor to Terra Nova Insurance Company, prays the judgment, decree and  
15 declaration of this Court as follows:

16 1. That Terra Nova, and Markel as its successor, had and has no obligation to  
17 defend Magellan Construction, LP, Townhome Village at Grayhawk, LLC, or Garden  
18 Village Associates at Grayhawk, LLC, or any of them, in either of the actions heretofore  
19 filed in the Superior Court of the State of Arizona in and for the County of Maricopa under  
20 the subject Policy issued by Terra Nova;

21 2. That such Policy provides and provided no coverage (defense or  
22 indemnification) to or for Magellan, Townhome, or Garden Village for any of the events  
23 alleged in the aforesaid actions in the Maricopa County Superior Court;

